IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1995 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

D.R. PATEL MANAGER,

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1995 of 1989

MR VYAPAK DESAI FOR MR. BH CHHATRAPATI for Petitioner No. 1

MR. PREMAL JOSHI, AGP, for Respondent No. 1-4

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 09/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE K.M.MEHTA)

1. D.R. Patel, Manager, Ambica Talkies, petitioner, has filed this petition challenging the order dated

26.5.1988 passed by Mamlatdar, Dehgam, notice dated 17.3.1989 issued by the Mamlatdar at Annexure-J to the petition, notice dated 16.2.1989 issued by respondent No. 1 Mamlatdar and the order dated 18.3.1989 passed by the Commissioner of Entertainment Tax, respondent No. 3, which is at Annexure-K to the petition. The petitioner has also challenged the Circular dated 19.8.1987 issued by the Deputy Commissioner, Entertainment Tax, which restricts the benefit of entertainment tax under section 29 of the Gujarat Entertainment Tax Act.

2. The facts giving rise to this petition are as under:

2.1 The petitioner's talkies is situated at Rakhial, Taluka Dehgam, Dist. Ahmedabad. The petitioner was granted a licence under the Cinema Rules on 15.1.1985. It is the case of the petitioner that the petitioner's case falls within the definition of "Janata Cinema" as defined under clause (ddd) of Rule 2 of Bombay Cinema Rules, 1954 (hereinafter referred to as "the Rules"). It is the case of the petitioner that the petitioner's talkies has been granted Janata Cinema status as it is situated in the above village whose population is not more than the required number under the Cinema Rules set out as per preceding census.

2.2 Before we consider the controversy, the learned advocate for the petitioner has invited our attention to some of the statutory provisions. The learned advocate for the petitioner has relied on the provisions of Bombay Cinemas (Regulation) Act, 1953 (hereinafter referred to as "the Act"). The said Act provides for regulating exhibitions of films and licensing of places in which cinematograph films are exhibited in the State of Bombay (the then). The Act provides for certain definition and Section 3 provides for cinematograph exhibition to be licensed and Section 4 of the Act provides licensing authority. Section 5 of the Act provides for restrictions on powers of licensing authority. Section 9 provides that State Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

2.3 The learned advocate for the petitioner has also invited our attention to the Rules which has been enacted under the provisions of the Act. The Rules are known as Bombay Cinema Rules, 1954. He has invited our attention to the definition "Janata Cinema" contained in clause (ddd) of Rule 2 of the Rules which provides as under:

"(ddd) "Janata Cinema" means a cinema erected after the commencement of the Bombay Cinema (Gujarat Amendment) Rules, 1979 and located in a village or a town the population of which as ascertained at the last preceding census is not more than 30,000."

2.4 Rule 3 of the Rules provides for No Objection Certificate and Rule 6 of the Rules provides for grant of No Objection Certificate and other Rules which govern the regulation of cinemas for which we are not concerned in this petition.

2.5 The learned counsel for the petitioner has also invited our attention to the provisions of Gujarat Entertainment Tax Act, 1977 (hereinafter referred to as "the Act of 1977"). The Act of 1977 provides for law relating to imposition of tax on entertainments in the State of Gujarat. Section 2 of the Act of 1977 provides some definitions. Section 2(a) provides for "admission to an entertainment". Section 2(e) provides for "entertainment". Section 2(g) defines "payment for admission". Section 2(j) provides definition of "proprietor". Section 3 provides for tax on payments for admission to entertainments. The said Section is a charging Section. Section 3 of the Act of 1977 reads thus:

"(1) There shall be levied and paid to the State Government on,

(a) every payment for admission to an entertainment, other than the payment for admission referred to in clause (b), a tax, at the following rates, namely:-

(i) within the limits of a local area, the population of which as ascertained at the last preceding census and notified by the State Government in the Official Gazette after such census is more than 1,00,000, at the rate of 50 per cent of such payment

(ii) in any other local area, at the rate of 45 per cent of such payment,

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(3) Where the payment for admission to an entertainment is made wholly or partly by means of a lump sum paid as a subscription or contribution to any person, or for a season ticket or for the right of admission to a series of entertainments or to any entertainment during a certain period of time, or for any privilege, right, facility or thing combined with the right of admission to any entertainment or involving such right of admission without further payment or at a reduced rate, the tax shall be levied on the amount of the lump sum but where the prescribed officer is of opinion that the payment of a lump sum or any payment for a ticket, represents payment for other privileges, rights or purposes besides the admission to an entertainment, the tax shall be levied on such an amount as appears to the prescribed officer to represent the right of admission to the entertainment in respect of which tax is payable."

2.6 Section 6 of the Act of 1977 provides consolidated payment for tax which reads as follows:

"(1) The State Government may, on the application of a proprietor of any entertainment, (other than the entertainment to which sub-section (2) of this Section and) sub-section (3) of Section 6A and Section 6B, applies in respect of which tax is payable under sub-Section (1) of Section 3, allow the proprietor on such conditions as the State Government may impose, to compound the tax payable in respect of such entertainment for a fixed sum.

(2) Notwithstanding anything contained in sub-Section (1) of Section 3, every proprietor of a cinema in a specified area shall have an option of payment of tax at the rates specified in sub-section (5) to be exercised as provided in sub-section (3) within ninety days from the date of commencement of the (Gujarat Entertainment Tax (Amendment) Act, 1993 and any person who becomes a proprietor or any day after the date of such commencement may exercise such option within ninety days from the day on which he becomes the proprietor:

Provided that an application under

sub-Section (3) may be entertained by the prescribed officer after the expiry of the period specified in this sub-section if the applicant satisfies the prescribed officer that he had sufficient cause for not making application within such period.

(3) A proprietor of a cinema desiring to exercise the option referred to in sub-section (2), shall make an application to the prescribed officer in such form as may be prescribed to permit him to make, in lieu of the amount of tax payable by him under sub-Section (1) of Section 3, payment of tax at the rates specified in Schedule-I

(4) On an application made under sub-Section (3), the prescribed officer may grant such permission and there upon subject to sub-section (6), the payment of tax shall be made accordingly.

(5) Where a proprietor has been permitted to pay tax under sub-Section (4), he shall be liable to pay tax weekly at the rates specified in the Schedule I irrespective of the number of shows held in a week."

2.7 Section 6A provides for tax on entertainments by Video. Section 6B provides for tax on exhibition of entertainment by means of any type of antenna or cable television. Section 6C provides for registration. Section 7 provides for admission to entertainment. Section 8 provides returns and assessment. Section 9 provides assessment of escaped payments for admission. Section 10 provides payment of tax. Section 29 provides for exemption. Section 29 reads thus:

"(1) The State Government may, by notification in the Official Gazette, exempt either wholly or partly, any entertainment or class of entertainments from payment of tax, subject to such conditions as may be specified therein-

(a) where such entertainment is provided for any educational, medical, charitable, philanthropic or such other purpose; or

(b) where the State Government considers it necessary so to do in the public

interest.

(2) Every notification issued under sub-section (1) shall be laid for not less than thirty days before the State Legislature as soon as possible after it is issued and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which it so laid or the session immediately following.

(3) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect."

2.8 The learned counsel for the petitioner has invited our attention to the Notification at Annexure "A" to the petition issued on 11.12.1979 under which in exercise of the powers conferred under clause (b) of sub-section (1) of Section 29 certain exemption were granted from payment of tax to Janata Cinema. The said Notification issued by the Government provides exemption from liability to pay tax and additional tax leviable under section 6 to the exhibition of the films in a Janata Cinema to certain extent. The Government issued amendment to the said Notification on 4.7.1989 which reads as under:

"Information, Broadcasting and Tourism Department

NOTIFICATION
Sachivalaya, Gandhinagar,
Dated the 4th July, 1989

No. (GHT.89.23)EPT.1387.1794.e:- In exercise of the powers conferred by clause (b) of sub-section (1) of Section 29 of the Gujarat Entertainment Tax Act, 1977 (Guj. 16 of 1977), read with Section 21 of the Bombay General Clauses Act, 1904, the Government of Gujarat, hereby amends the Government Notification, Finance Department No. (GHN.87) MNR.1077.4012 (S.29)TX, dated 11th December, 1979, as follows, namely:

In the said Notification, after the existing proviso, the following proviso shall be inserted as under-

"Provided further that the benefit of tax exemption shall not be available for the purpose

of compounded tax under Section 6 of the Act."

By order and in the name of the Governor of Gujarat.

Sd/- (S.R. Mehta)
Deputy Secretary to Government"

2.9 The learned counsel for the petitioner has stated that pursuant to the aforesaid statutory provision the petitioner filed an application on 22.1.1985 for consolidated payment of entertainment tax under Section 6 of the Gujarat Entertainment Tax Act. Pursuant to the aforesaid application, the petitioner has filled up certain application forms. In the said application the petitioner had stated that on filing of this application the petitioner was entitled to exemption under Section 29 of the Gujarat Entertainment Tax Act for the period 18.1.1985 to 17.1.1986 for the first year and for the second year from 18.1.1986 to 17.1.1987 for which he had to pay only 25% of the tax. Pursuant to the aforesaid application the petitioner had filled the necessary form under Rule 5A of the Rules copy of which is produced at Annexure-B at page 21 to the petition.

2.10 The petitioner thereafter stated that Mamlatdar, Dehgam, has passed order dated 26.5.1988 in which it was communicated that the petitioner is liable to pay tax of Rs. 4,83,552.55 ps. in view of the assessment of tax. The Mamlatdar, Entertainment Tax Officer, respondent No. 1 herein passed order dated 29.1.1989 directing the petitioner to pay certain tax and pointed out certain conditions for granting permission.

3. Being aggrieved and dissatisfied with the aforesaid order, the petitioner filed appeal before the District Collector, Ahmedabad, being Appeal No. LB/Appeal-144/88. The District Collector, Ahmedabad, passed order dated 20.9.1988 and has held that the petitioner was granted permission to run "Janata Cinema". The authority found that the petitioner did not pay amount of Rs. 3,28,303.20 ps. during the period from 18.1.1986 to 1.4.1987 and also found that tax amount of Rs. 1,55,249.35 ps. is not paid during the period 2.4.1987 to 21.4.1987. Thus, in all total amount of Rs. 4,83,552.55 ps. is paid less. The authority held that when the petitioner gets benefit of Janata Cinema under Section 6 of the Act, it cannot avail of both benefits of exemption viz. under Section 6 and under Section 29 of the payment of entertainment tax. In view of the said fact, the District Collector confirmed the order of the

authority.

4. Being aggrieved and dissatisfied with the said action the petitioner has filed Revision Application before the Government. It appears that before the Government the petitioner also filed an application for stay. The District Collector, Entertainment Tax, Gujarat State by his communication dated 18.3.1989 informed the petitioner that Revision Application has not been accepted and was filed. The said order is produced in the petition by way of amendment.

5. Mr. Vyapak Desai, learned advocate for Mr. B.H. Chhatrapati for the petitioner appeared and submitted before us that the Scheme under Section 6 of the Gujarat Entertainment Tax Act and the Scheme of exemption under Section 29 of the Gujarat Entertainment Tax Act are independent of each other. Therefore, the petitioner's cinema talkies is entitled to exemption under both the provisions. He has also assailed the order of the authorities on the ground that the said orders are violating the principles of natural justice as the authority has not given any cogent and convincing reasons for dismissing the appeal as well as the Revision Application. For that purpose he has invited our attention to the aforesaid statutory provisions and the Notification issued by the Government from time to time.

6. Mr. Desai, learned counsel for the petitioner, stated that Janata Cinema is distinct cinema and the Government has also given certain benefits to Janata Cinema not only for exemption but also for relaxation of certain rules. For appreciating the said contention, the learned counsel has invited our attention to the Division Bench judgement in the case of MAHEBOOBBHAI JALALBHAI SHAIKH VS. STATE OF GUJARAT reported in 1980(2) G.L.R. 162 where certain rules in relation to Janata Cinema were challenged before the Division Bench of this Court and the Division Bench has considered the definition of Janata Cinema which we have quoted earlier and also considered various Rules in this regard. He has also invited our attention to certain discussion of the said judgement for substantiating his contention and Janata Cinema is distinct scheme than the other cinema namely permanent cinema and touring cinemas.

7. On the other hand Mr. Joshi, learned A.G.P. has submitted that the order of authority is within the parameters of the provisions of the Act and Rules. He has also stated that the Notification which has been issued by the State Government dated 11.12.1979 was very

much clear. However , out of abundant caution, the Government has issued an amendment in the said Notification on 4.7.1989.

8. The learned counsel for the respondent has also invited our attention to the Circular issued by the Commissioner of Entertainment Tax dated 19.8.1987. The said Circular is in consonance with the amendment issued by the Government.

9. Mr. Joshi, learned A.G.P. for the respondents has invited our attention to the Division Bench judgement of this court in the case of ARMAN CINEMA VS. STATE reported in 1998(3) G.L.R. 1836. In the said case also the petitioners were Janata Cinema and the petitioners were enjoying the benefit under Sections 6 as well as 29 of the Gujarat Entertainment Tax Act. In that case, the petitioners also referred to amendment in the Notification and it was contended by the petitioners that as the amendment came into existence on 4.7.1989, it was clear that till this date the proprietors of cinema theatres were entitled to the benefits of Sec. 29 as well as Sec. 6 of the Act. It was further contended that the the said amendment the benefit which was accrued to the proprietor, was taken away and the same would only act prospectively and not retrospectively. The learned counsel for the petitioners has relied on the judgement of the Hon'ble Supreme Court in the case of M/S. INDIAN METALS AND FERRO ALLOYS LTD. & ANR. VS. STATE OF ORISSA & ORS. reported in 1987(3) SCC 189 in support of the contention that the benefit which ws enjoyed by the party cannot be taken away with retrospective effect thereby saddling him with heavy financial burden in respect of the past period. The learned counsel for the petitioners has also relied on the judgement of the Hon'ble Apex Court in the case of STATE OF MAHARASHTRA VS. JAGANNATH ACHYUT KARANDIKAR reported in AIR 1989 SC 1133 where the Hon'ble Supreme Court has held that the executive instruction may be supplement and not supplant statutory rules. Relying on the said judgement, it was contended by the petitioners' counsel that the statutory right enjoyed by the petitioners was taken away by issuing a Notification.

9.1 On behalf of the Government it was submitted that the stand of the Government was that Janata Cinema cannot be granted benefit both under Section 29 as well as Section 6 of the Gujarat Entertainment Tax Act. Once they have opted for benefit under Section 6 they were not entitled to benefit under Section 29 of the GET Act.

9.2 The Division Bench of this Court (Coram: K.G. Balakrishnan (as His Lordship then was) and J.M. Panchal, JJ) in the aforeasid judgement has held that the amendment to the Notification is in the form of clarification. It was made clear by the amendment that benefit of tax exemption will not be available for the purpose of compounded tax under Section 6 of the Act. The said amendment does not alter the procedure laid down under the law and the Court specifically negatived the contention that till the date of said amendment of the Notification, the petitioners were entitled to the benefits of Section 6 as well as Section 29 of the Act. (Re: para 12 on page 1841). The Court further observed that amendment effected to the Notification is not in the form of taking away the benefit enjoyed by the petitioners. It was only by way of clarification of the existing law and therefore the decision in the case of M/S. INDIAN METALS AND FERRO ALLOYS LTD. & ANR. VS. STATE OF ORISSA & ORS. is not applicable in this case. (Re: para 13 on page 1841). The Court also held that the contention of the petitioner cannot be accepted as the petitioners' statutory rights are not taken away in any manner by the Notification issued on 4.7.1989 and the petitioners had no pre-existing rights at the time of issuance of the Notification.

9.3 The Division Bench has considering the contention of the petitioners, observed in para 15 on page 1842 as under:-

> "For the foregoing reasons, we are of the view that the petitioners are not entitled to the benefit of general exemption, if any, granted to them. We find no reason to interfere with Annexure-C order. The Special Civil Applications are without any merits and, therefore, they are dismissed. Rule in each Special Civil Application is discharged, with no order as to costs. Interim relief granted earlier in each petition is hereby vacated."

10. We have considered the provisions of the Bombay Cinemas (Regulation) Act, 1953 and Rules and also Gujarat Entertainment Tax Act, 1977, particularly Sections 6 and 29 of the Act. We have also considered the Division Bench judgements of this Court in the case of MAHEBOOBBHAI JALALBHAI SHAIKH VS. STATE OF GUJARAT (supra) and ARMAN CINEMA VS. STATE (supra). We have also considered Notification produced by the petitioner, amendment to the said Notification, Circular issued by the Government and orders passed by the authorities. In

view of the judgement of the Division Bench of this Court in the case of ARMAN CINEMA VS. STATE (supra) which completely covers the case of the petitioner, we do not find any infirmity in the impugned order of the authority. The facts of the present case and the facts in the case of ARMAN CINEMA (supra) are almost identical and the contention of the State Government is fully supported by the said decision wherein the Division Bench has specifically held that the petitioners are not entitled to benefit under both Section 6 and Section 29 of the GET Act. In our view the said decision gives a complete answer to the contention and we, respectfully following the decision of the Division Bench, do not find any substance in the contention of the petitioner.

10.1 We have also considered the Circular dated 19.8.1987. The Government by the said Circular has stated that Janata Cinema cannot get advantage of both Section 6 and Section 29 of the Act. This Circular is issued in consonance with the statutory provisions as well as the amendment under the Notification and therefore the said Circular does not infringe any provisions of the Act. Therefore, the challenge of the petitioner cannot be accepted. In this view of the matter, the petition is rejected. Rule is discharged with no order as to costs.

(R.K. ABICHANDANI, J)

(K.M. MEHTA, J)
(pkn)